

STATE OF VERMONT  
ENVIRONMENTAL BOARD.  
10 V.S.A., 'Chapter 151

RE: **UniFirst** Corporation by           Memorandum of Decision  
Michael Carver, Esq.           Declaratory Ruling #166  
162 Elm Street  
Montpelier, Vermont 05602

On September 26, 1984, the Environmental Board ("the Board") issued Declaratory Ruling #147, directing the UniFirst Corporation to apply for and diligently pursue an amendment to Land Use Permit #5R0153. On December 17, 1984, UniFirst filed a second Petition for Declaratory Ruling, requesting this Board to determine whether or not it is appropriate for the District #5 Environmental Commission ("the Commission"), in the course of reviewing UniFirst's now pending permit amendment application, to review issues pertaining to the "investigatory and remedial work which has been exhaustively examined by the Agency of Environmental Conservation.

On February 1, 1985, the Board's Chairman issued a preliminary ruling pursuant to Board Rule 16(B), dismissing **UniFirst's** Petition. On February 8, UniFirst filed a motion requesting permission to appeal a related decision of the Commission to the Board. On February 15, the Board convened a hearing to hear oral argument from the parties with respect to objections to the Chairman's preliminary ruling and UniFirst motion for permission to appeal. The following were present at that hearing:

UniFirst Corporation by Michael Carver, Esq. and Jeffrey  
Bates, Esq.;  
Agency of Environmental Conservation by Merideth Wright,  
Esq.;  
Williamstown Committee for Health and Safety ("the  
Committee") by William Pearson, Esq.

I. DISMISSAL OF PETITION FOR DECLARATORY RULING

After hearing the parties' oral argument, reviewing memoranda filed by UniFirst and the Committee, and reviewing the Chairman's preliminary ruling, we agree that dismissal of the Petition is required. A declaratory ruling petition is not the appropriate method for contesting a decision of the Commission. We, therefore, incorporate by reference and adopt as our own, the Preliminary Ruling issued by the Chairman on February 1.

II. INTERLOCUTORY APPEAL REQUEST

On December 13, 1984, the Commission Chairman issued a prehearing conference report in respect to proceedings on **UniFirst's** application to amend Land Use Permit #5R0193. A portion of the report addressed the issue of the appropriate scope of review by the Commission. UniFirst objected to the Chairman's preliminary ruling and, on December 19, the full

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Commission heard oral argument from the parties. On January 4, the Commission issued a decision affirming its Chairman's preliminary ruling. On January 11, UniFirst filed with the Commission a motion for permission to appeal under Board Rule 43. On January 31, the Commission issued a written decision, denying **UniFirst's** motion. Finally, on February 8, UniFirst renewed its motion for permission to appeal before this Board as **it is** entitled to do under Board Rule 43.

Our analysis of **UniFirst's** request starts with the proposition that interlocutory appeal is an extraordinary method of review.

Interlocutory appeals are an exception to the normal restriction of appellate jurisdiction to the review of final judgments. There are weighty considerations that support the finality requirement. Piecemeal appellate review causes unnecessary delay and expense, and wastes scarce judicial resources. [Citation omitted.] Furthermore, an appellate court labors under great disadvantages in disposing of interlocutory appeals. The litigants may not yet have narrowed the case's issues sufficiently for **appellate** review. We are deprived of the benefits of a final trial court opinion. Interlocutory review requires us to decide legal questions in a vacuum, without benefit of factual findings. Appellate decisionmaking suffers from such abstractness. By its very nature then, interlocutory appeals impair this Court's basic functions of correctly interpreting the law and providing justice for all litigants,

In re Pyramid Co. of Burlington, 141 Vt. 294, 300-301 (1982).

Our Rule permits us to entertain an interlocutory appeal only if an immediate appeal will materially advance the application process. Board Rule 43. We conclude that UniFirst has failed to fulfill this requirement. Our schedule would not permit disposition of this matter in a period shorter than the time likely to be taken in Commission proceedings. Because UniFirst is entitled to a de novo appeal (see 10 **V.S.A. §6089**), the most expeditious **route is for** this matter to remain with the Commission.

However, having decided to deny **UniFirst's** appeal request, we feel **obligated to** provide limited guidance to the Commission. We are troubled by issues raised by the parties during the

course of oral argument. First, UniFirst suggested that, in some manner, the Act 250 process posed an impediment to the Company's implementation of its "remedial action plan." Act 250 jurisdiction only extends in this circumstance to the construction of improvements for a commercial purpose. Work which is in the nature of pollution abatement and clean-up, and which does not involve the construction of new improvements to be used as components of UniFirst's on-going commercial operations, does not require Act 250 review. For example, the excavation and removal of contaminated soil or the installation of a groundwater testing and filtering system designed solely to abate contamination do not require a land use permit. However, the construction and installation of a pretreatment system as a new component to be used in UniFirst's industrial laundry facility could well require Act 250 review.

Second, UniFirst indicated that its "remedial action plan," if implemented, would require removal of the 40' by 50' garage addition addressed in Declaratory Ruling #147. If this is the case, we do not believe that a review of that addition by the Commission would be fruitful, despite our directive that UniFirst diligently pursue an amendment 'application authorizing the addition. While the scheduling of proceedings lies within the Commission's discretion, it may be reasonable to defer that portion of the pending application pertaining to the addition for a reasonable period of time to await the final approval of the remedial action plan.

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III. ORDER

Declaratory Ruling Petition #166 is dismissed. UniFirst's motion for permission to appeal is denied.

Dated at Montpelier, Vermont this 20th day of February, 1985.

VERMONT ENVIRONMENTAL BOARD

by:



Margaret P. Garland

Acting Chairman

Ferdinand Bongartz

Lawrence H. Bruce, Jr.

Melvin H. Carter

Warren M. Cone